

REMARKS

Claims 1 – 60 are pending, and claims 1 – 60 stand rejected. The applicant traverses the rejection and respectively requests allowance of claims 1 – 60. Claims 1- 60 are rejected under 35 U.S.C 103(a) as being unpatentable over Moura et. al. (US 6,411,606) in view of Kieider et. al. (US 6,154,489). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Claim 1 requires “receiving a message” and then “processing the message to determine channel information that indicates performance of channels in the broadband wireless system”. The examiner has identified a device in Moura (the Hybridware client 73) as the device that receives and processes messages. The examiner states that column 2, lines 58 – 64 and column 15, lines 11 – 18 show that the Hybridware client 73 process a message to determine channel information that indicates performance of the channels (see page 3 lines 1 – 3 of paper 6). The examiner has incorrectly characterized the cited text. Column 2, lines 58 – 64 in Moura doesn’t talk about or even mention Hybridware client 73. Column 2, lines 58 – 64 in Moura is about the rotating priority polling system used to prioritize the servicing of a request for a channel from an RLA based on how long the request has gone unfilled. It has nothing to do with how the Hybridware client 73 responds to messages. Column 15, lines 11 – 18 talks about how a remote link adapter using a credit channel has lower performance than a remote link adapter using a sole use upstream channel. It also talks about how sole use upstream channels are allocated to remote link adapters based on how long the remote link adapter has been waiting for a sole use channel. Column 15, lines 11 – 18 does not talk about Hybridware client 73.

Hybridware client 73 has nothing to do with monitoring the performance of the system. Hybridware client 73 does receive messages. However none of the messages received by Hybridware client 73 are processed to determine channel information that indicates performance of channels. Therefore claim 1 is allowable as written.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim dependent therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Claims 2 - 20 depend on allowable claim 1. Therefore claims 2 - 20 are also allowable.

Claim 21 also has the limitation that it process messages to determine channel information that indicates performance of channels. Therefore the arguments for claim 1 (above) apply to claim 21 and claim 21 is allowable as written.

Claims 22 - 40 depend on allowable claim 21. Therefore claims 22 - 40 are also allowable.

Claim 41 also has the limitation that it process messages to determine channel information that indicates performance of channels. Therefore the arguments for claim 1 (above) apply to claim 41 and claim 41 is allowable as written.

Claims 42 - 60 depend on allowable claim 41. Therefore claims 42 - 60 are also allowable.

The prior art made of record but not relied upon has been reviewed and is not considered relevant.

Conclusion

Based on the above remarks, the Applicants submit that claims 1 - 60 are allowable. There may be additional reasons in support of patentability, but such reasons

are omitted in the interests of brevity. The Applicants respectfully request allowance of claims 1 - 60.

Any fees may be charged to deposit account 21-0765.

Respectfully submitted,

Date: 8/24/04


SIGNATURE OF PRACTITIONER

Steven L. Webb, Reg. No. 44,395
Duft Setter Ollila & Bornsen LLC
Telephone: (303) 938-9999 ext. 22
Facsimile: (303) 938-9995

Correspondence address:

CUSTOMER NO. 28004

Attn: Harley R. Ball
6391 Sprint Parkway
Mailstop: KSOPHT0101-Z2100
Overland Park, KS 66251-2100